THE HONL'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.6863 OF 2006

Dated: 12th April, 2006.

Between:

Mr. Narendra Gopal Baldawa … Petitioner

And

A.P. Mahesh Cooperative Urban Bank Limited,

Rep. by its Branch Manager, 5-3-989, Shera Estates,

N.S. Road, Hyderabad. … Respondent

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ORDER :

The writ petitioner is one of the guarantors in respect of the loan availed by M/s. Foamex India Private Limited from the respondent Bank. It is stated that the petitioner is the co-owner of the immovable property mortgaged in favour of the respondent Bank. It is not in dispute that M/s. Foamex India Private Limited committed default in repayment of loan amount and consequently the respondent Bank invoked the provisions of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act') and issued a notice dated 17-3-2003 under Section 13 (2) of the Act demanding M/s. Foamex India Private Limited as well as the guarantors to repay a sum of Rs.92,25,930-21 ps towards the amount due. Questioning the said notice, M/s. Foamex India Private Limited filed W.P.No.7784 of 2003.

Though this Court initially granted stay of all further proceedings, ultimately the writ petition was disposed of granting liberty to the petitioner therein to avail the remedy provide under the Act. It is stated that in the meanwhile the respondent Bank initiated steps under the provisions of the Multi-state Cooperative Societies Act 39 of 2002 for recovery of the amounts due. In pursuance thereof, an Award under Section 84 of the Multi-state Cooperative Societies Act, 2002 was passed on 27-6-2003 against the borrower as well as the guarantors including the writ petitioner directing

to repay the outstanding loan amount of Rs.1,00,50,038-21 ps with further interest. In pursuance of the said award, the respondent Bank filed EP.No.31 of 2004 in the Court of the Chief Judge, City Civil Court, Hyderabad which appears to be pending.

While so, the respondent Bank issued possession notice dated 17-8-2004 under Section 13 (4) of the Act read with Rule 9 of the Security Interest (Enforcement) Rules, 2002 (for short, 'the Rules') taking possession of the mortgaged property. The petitioner states that questioning the said notice under Section 13 (4) of the Act, M/s. Foamex India Private Limited filed an Appeal before the Debts Recovery Tribunal, Hyderabad, in which initially stay of all further proceedings was granted. However, the said Appeal was dismissed for default on 16-2-2006.

The petitioner alleges that in view of the dismissal of the Appeal, the respondent Bank has been attempting to dispossess the petitioner from the mortgaged property. Aggrieved by the said action, this writ petition is filed seeking a declaration that the action of the respondent in pursuing two remedies simultaneously under the provisions of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 as well as the Multi-state Cooperative Societies Act, 2002 is arbitrary and illegal and it is against the doctrine of the election.

Having heard the learned Counsel for the petitioner and having perused the material on record, I do not find any substance in the contentions raised by the petitioner. The learned Counsel for the petitioner could not point out any provision under the Act which prohibits enforcement of the provisions of the Act simultaneously with the execution proceedings in pursuance of a statutory award. That apart, admittedly the petitioner never challenged the proceedings initiated under Section13(4) of the Act. Though he is a party to the award passed under the provisions of the Multi-state Cooperative Societies Act, he allowed the award to become final. Having failed to prefer an appeal under Section 17 of the Act and having failed to raise objection as to the maintainability of the proceedings initiated under Section 13 of the Act, the petitioner cannot now seek a Mandamus restraining the respondent Bank to take the

steps following due process of law.

The decision of the Supreme Court cited by the learned Counsel for the petitioner in A.P. STATE FINANCIAL CORPN. v. M/s. GAR RE-ROLLING MILLS which arises out of the provisions under the State Financial Corporations Act, 1951 having regard to the scope and object of Sections 29 and 31 of the said Act is not applicable to the facts of the present case.

The Writ Petition is misconceived and accordingly the same is dismissed. No costs.

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G. ROHINI, J.

Dt. 12–04-2006

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